HONOURABLE MRS. JUSTICE T.MEENA KUMARI

&

HONOURABLE MS JUSTICE G. ROHINI

WRIT PETITION No:25865 OF 2007

Dated:06.12.2007

Between:

M/s. Savvy Constructions, 54-16-8/28,
Srinagar Colony,
Near Layola College, Layola Gardens,
Vijayawada, Krishna District rep.,
By its Managing Partner
P. Ramakrishna

..Petitioner

And

1. Joint Commissioner (CT)
   Legal, A.P. Hyderabad and another.

..Respondents.

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HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
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ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

The present writ petition is filed by the petitioner seeking to declare the action of the 2nd respondent in insisting upon for the balance 50% of the demand pending the stay application before the 1st respondent and the appeal before the Sales tax Appellate Tribunal, Additional Bench, Visakhapatnam, for the assessment year 2002-2003, as arbitrary and illegal and consequently, to grant stay of collection of balance 50% of the disputed demand for the assessment year 2002-2003 pending disposal of the appeal before the Sales Tax Appellate Tribunal.

The main grievance of the petitioner is that aggrieved by the appellate order passed by the Appellate Deputy Commissioner, Vijayawada, an appeal has been preferred before the Sales Tax Appellate Tribunal. Subsequent to the appellate order, the petitioner has paid 50% of the disputed tax. But however, the 2nd respondent is insisting upon for balance demand tax. Hence, an application seeking stay of recovery of balance demand tax was moved before the 1st respondent and the same is pending consideration. However, the 2nd respondent is insisting and threatening to take coercive steps. Hence, the present writ petition is filed.

Heard the learned Counsel appearing for the petitioner and

the learned Government Pleader for Commercial Tax and perused the material available on record.

It is the contention of the learned Counsel for the petitioner that prior to filing the appeal before the Appellate Deputy Commissioner, Vijayawada and subsequent to disposal of the said appeal, the petitioner has already paid 50% of the demanded tax and now, the appeal is pending before the Sales Tax appellate Tribunal against the orders passed by the Appellate Deputy Commissioner. At this stage, the insistence of the 2nd respondent for payment of balance disputed tax is illegal and unjustified and at this juncture, if the relief as to the stay of the proceedings is not entertained and if the recovery of the balance disputed tax in question is effected, the very purpose of filing the appeal before the Sales Tax Appellate Tribunal, which is a statutory remedy that is available to the aggrieved party, would be defeated.

In the facts and circumstances of the case and in view of the pendency of the appeal before the Sales Tax Appellate Tribunal and in view of the submission made by the learned Counsel for the petitioner that 50% of the disputed has already been paid, without expressing any opinion on the merits of the case, We feel it a fit case wherein stay can be granted. Hence, there shall be stay of recovery of balance disputed tax till the disposal of the appeal pending before the Sales Tax Appellate Tribunal.

Accordingly, the writ petition is disposed of. No order as to costs.

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Justice T. Meena Kumari

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Justice G. Rohini

Date: 6th December, 2007
Note:
Wire at party costs
(BO)
Nn/Gurc.

HONOURABLE MRS. JUSTICE T.MEENA KUMARI
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HONOURABLE MS JUSTICE G. ROHINI

WRIT PETITION No:25865 OF 2007

(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

06/12/2007